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# Health and Welfare

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# Health and Welfare

## Health and Welfare; Adolescent Family Life Program

Welfare and Institutions Code §§ 14021.7, 14132.49 (new).  
AB 2674 (Roos); 1990 STAT. Ch. 720

Existing law provides services<sup>1</sup> to pregnant teenagers under the Adolescent Family Life Program administrated by the Department of Health Services (Department).<sup>2</sup> Chapter 720 establishes Medi-Cal coverage of targeted case management services<sup>3</sup> for pregnant and parenting adolescents, and their children.<sup>4</sup> Chapter 720 implements this program on a two year trial basis,<sup>5</sup> provided it receives approval for federal funding.<sup>6</sup> At the end of the trial period the Department must determine the effect of the program and decide if it should be continued, expanded, or terminated.<sup>7</sup>

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1. See CAL. HEALTH & SAFETY CODE § 309.200(a) (West Supp. 1990) (services include medical care, psychological and nutritional counseling, maternity counseling, adoption counseling, academic and vocational programs, and day care).

2. *Id.* §§ 309.200, 309.300 (all current funds provided by annual Budget Act).

3. See *id.* §§ 309.100, 309.200 (definition of target management services).

4. CAL. WELF. & INST. CODE § 14021.7(a) (enacted by Chapter 720).

5. *Id.* § 14132.49(b) (enacted by Chapter 720).

6. *Id.* § 14132.49(a) (enacted by Chapter 720). See also 42 U.S.C. § 1396n(g) (1988) (program requirements to qualify for federal funding).

7. CAL. WELF. & INST. CODE § 14132.49(c) (enacted by Chapter 720). Since the implementation of the Adolescent Family Life Program, there has been a decrease in the rate of low birth weights, of infants born to teenage mothers, and a decrease in the school dropout rate of pregnant mothers. 1990 Cal. Stat. ch. 720, sec. 1, at \_\_\_\_\_. The legislature recognizes the need to maintain services that continue this progress. *Id.*

## Health and Welfare; Aid to Families with Dependent Children

Welfare and Institutions Code § 11051 (repealed); §§ 11275, 11276, 11277, 11278, 11279, 11280, 11281, 11282, 11283, 11284, 11285, 11286, 11287 (new); §§ 11017, 11268 (amended).

SB 623 (Royce); 1990 STAT. Ch. 1586

Support: Friends Committee on Legislation, Western Center on Law and Poverty, Inc.

Opposition: Coalition of California Welfare Rights Organizations

Existing law requires an applicant or recipient of Aid to Families with Dependent Children (AFDC)<sup>1</sup> to meet certain requirements and furnish a social security number as a condition of eligibility for aid.<sup>2</sup> Under Chapter 1586, the applicant's submission of verification that he or she has applied for a social security number satisfies the requirement to provide a social security number.<sup>3</sup> Chapter 1586 also provides that when an applicant, for good cause,<sup>4</sup> is unable to complete a social security application, the applicant may become eligible for assistance while obtaining the documents required to complete the application.<sup>5</sup>

Prior law required an AFDC recipient requesting the restoration of aid within a year of its cancellation or discontinuance to file a new affirmation of eligibility.<sup>6</sup> Under Chapter 1586, when a

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1. See generally CAL. WELF. & INST. CODE §§ 11200-11507 (West 1980 and Supp. 1990) (governing the AFDC program).

2. *Id.* § 11268 (amended by Chapter 1586). See *id.* §§ 10052 (West 1980) (definition of aid); 11250 (West Supp. 1990) (eligibility for aid).

3. *Id.* § 11268(a) (amended by Chapter 1586).

4. See *id.* 11268(b)(1) (amended by Chapter 1586) (requiring the county to determine whether good cause exists). "Good cause" includes cases where documentation necessary for the social security number account application is not immediately available. *Id.* § 11268(b)(2) (amended by Chapter 1586).

5. *Id.* § 11268(c) (amended by Chapter 1586). Eligibility for aid must continue for the maximum period allowed by federal law. *Id.*

6. See 1984 Cal. Stat. ch. 1248, sec. 1, at 4293 (amending CAL. WELF. & INST. CODE § 11051) (repealed by Chapter 1586).

recipient requests restoration of aid, the county<sup>7</sup> must review the recipient's file to determine whether it contains verification of current eligibility,<sup>8</sup> and identify in writing any additional documents that the applicant may submit to verify eligibility.<sup>9</sup> Chapter 1586 also mandates that the county assist the applicant or recipient in obtaining information or verification from a third party, and cover any cost for obtaining the information.<sup>10</sup> Under Chapter 1586, the county cannot deny an aid application for failure to provide verification if the applicant cooperates in obtaining the requested information.<sup>11</sup> Upon denying aid for failure to provide eligibility verification, the county must notify the applicant of his or her right to have the denial rescinded.<sup>12</sup> Chapter 1586 requires the county to rescind denial of an application if the applicant submits all required verifications within thirty days of denial.<sup>13</sup>

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7. See CAL. WELF. & INST. CODE § 10800 (West 1980) (defining administration of public assistance as a county function).

8. *Id.* 11275.05(a)-(c) (enacted by Chapter 1586) The retrieval and review of the file must be timely, and the county must not require submission of any document already on file. *Id.*

9. *Id.* § 11275 (enacted by Chapter 1586). This notice must be given within ten days of the aid application. *Id.*

10. *Id.* § 11275(a), (b) (enacted by Chapter 1586). This requirement applies only when an applicant's good faith effort to procure the information fails. *Id.*

11. *Id.* § 11275.15 (enacted by Chapter 1586). See generally *Woodley v. Dep't of Health and Rehab. Svcs. Dist. 3, Lake Co. AFDC*, 505 So. 2d 676, 678 (Fla. Dist. Ct. App. 1987). The court reversed and remanded an order upholding denial of an AFDC application after finding that the applicant's failure to request a time extension to obtain verification of worker's compensation status did not excuse the department from submitting a policy exception request. *Id.*

12. CAL. WELF. & INST. CODE § 11281(b) (enacted by Chapter 1586).

13. *Id.* § 11275.20(b) (enacted by Chapter 1586). This provision applies only when the original denial is based solely on the applicant's failure to provide verification of eligibility. *Id.* § 11275.20(a).

## Health and Welfare; disabled persons' rehabilitation services

Welfare and Institutions Code §§ 19150, 19356.7, 19700, 19700.1, 19702, 19704, 19705, 19706, 19707, 19708, 19709 (amended).

AB 3023 (Statham); 1990 STAT. Ch. 758

Existing law requires the Department of Rehabilitation (Department)<sup>1</sup> to provide vocational rehabilitation services<sup>2</sup> to persons with disabilities.<sup>3</sup> Chapter 758 ensures that the Department complies with federal law<sup>4</sup> by considering the availability of similar benefits before providing the services.<sup>5</sup>

Existing law gives an applicant who is dissatisfied with the Department's decision regarding the application for services the right to an administrative review and redetermination.<sup>6</sup> Under existing law, an applicant dissatisfied with the review and redetermination of the Department has the right to petition for a hearing before the Rehabilitation Appeals Board (Board).<sup>7</sup> Chapter 758 gives the appellant<sup>8</sup> the right to request a formal hearing before the Board at the same time he or she requests the administrative review.<sup>9</sup> Additionally, the hearing must not be delayed by the administrative review and must be held within forty-five days of the date the Board receives the request.<sup>10</sup> Under

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1. See CAL. WELF. & INST. CODE § 19000 (West 1980) (statement of policy establishing the Department of Rehabilitation).

2. See *id.* § 19150(a) (amended by Chapter 758) (goods and services to be provided as vocational rehabilitation services).

3. *Id.* § 19100 (West 1980).

4. See 29 U.S.C. § 723(a) (1988) (scope of vocational rehabilitation services).

5. CAL. WELF. & INST. CODE § 19150(b) (amended by Chapter 758). Federal law states that the provision of a service is to be made after a determination that comparable services and benefits are not available under other programs. 29 U.S.C. § 721(a)(8) (1988). A determination is not made if doing so would cause delay of services to anyone at extreme medical risk. *Id.*

6. CAL. WELF. & INST. CODE § 19704 (amended by Chapter 758).

7. *Id.*

8. See *id.* § 19700.1(c) (amended by Chapter 758) (definition of appellant).

9. *Id.* § 19704 (amended by Chapter 758).

10. *Id.* § 19704 (amended by Chapter 758).

Chapter 758, the hearing must be held before a quorum<sup>11</sup> of the Board<sup>12</sup> and a proposed decision<sup>13</sup> must be forwarded to the Director of the State Department of Rehabilitation<sup>14</sup> for the final decision.<sup>15</sup>

Existing law allows the information in the appellant's case record to be disclosed to that person or that person's authorized representative.<sup>16</sup> Under Chapter 758, if the Department determines that any psychological or other information may be harmful to the person, the Department must not release any information directly to the person, but may release the information to the person's authorized representative.<sup>17</sup>

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11. *See id.* § 19702(c) (amended by Chapter 758) A quorum consists of three of the seven members of the Board. *Id.*

12. A member of the Board must not have personal or financial interest in any matter that would affect his or her objectivity. *Id.* § 19700(c) (amended by Chapter 758).

13. *See id.* § 19707(b) (amended by Chapter 758) (the proposed decision must be by a majority of the Board members present at the hearing).

14. *See id.* 19700.1(b) (amended by Chapter 758) (definition of director).

15. *Id.* § 19707(f) (amended by Chapter 758). Copies of the proposed decision must be sent by certified mail to the appellant and Department representatives when the proposed decision is forwarded to the director. *Id.* § 19707(e) (amended by Chapter 758). The director must notify all parties of the intent to review within 20 days of receipt of the proposed decision. *Id.* § 19707(d) (amended by Chapter 758). Failure to notify is deemed an affirmation of the proposed decision. *Id.* The appellant has the opportunity to submit additional evidence prior to the director's review. *Id.* § 19707(e) (amended by Chapter 758). *See generally* Ryan v. New Jersey Comm'n for the Blind and Visually Impaired, 542 F. Supp. 841, 849 (D.N.J. 1982) (allowing a civil action for a plaintiff who had been denied rehabilitation services, under United States Code Title 49, section 1983, even though the plaintiff had not exhausted all state administrative remedies).

16. CAL. WELF. & INST. CODE § 19708(a) (amended by Chapter 758).

17. *Id.* § 19708 (amended by Chapter 758).

## **Health and Welfare; elder abuse**

Welfare and Institutions Code §§ 15610,  
15632 (amended).  
SB 2571 (Lockyer); 1990 STAT. Ch. 435

Under existing law, specified persons must report incidents of physical abuse<sup>1</sup> of elder or dependent<sup>2</sup> adults.<sup>3</sup> Chapter 435 expands existing law by including acts of isolation within the definition of the term “physical abuse.”<sup>4</sup>

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## **Health and Welfare; explosives**

Health and Safety Code §§ 12081, 12101 (amended); 12092  
(new).  
AB 3188 (Mountjoy); 1990 STAT. Ch. 734  
Support: California State Fireman’s Association

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1. See CAL. WELF. & INST. CODE § 15610(c) (amended by Chapter 435) (definition of physical abuse).

2. See *id.* § 15610(b)(2) (amended by Chapter 435) (definition of dependent adult).

3. *Id.* § 15630 (Deering Supp. 1990). Persons required to report incidents of abuse include custodians, health practitioners, or employees of a county adult protective services agency or a local law enforcement agency. *Id.* See generally Note, *The Not-So-Golden Years: The Legal Response to Elder Abuse*, 15 PEPPERDINE L. REV. 653 (1988) (discussing causes and types of elder abuse, and legislative remedies available to abuse victims).

4. CAL. WELF. & INST. CODE § 15632(c) (amended by Chapter 435). Isolation includes the following: (1) Intentional acts which prevent or are designed to prevent elder or dependent adults from receiving their mail or telephone calls; (2) telling visitors or callers that the elder or dependent adult is not able or does not wish to speak with the visitor or caller, or using physical restraint to prevent meetings with visitors or callers; (3) false imprisonment. *Id.* § 15610(g)(1)(A)-(D) (amended by Chapter 435).

Existing law requires the State Fire Marshal to regulate building standards pertaining to the sale, use, handling, possession, and storage of explosives.<sup>1</sup> Chapter 734 further mandates that the State Fire Marshal adopt regulations establishing standards for the size, form, contents, and location of caution placards to be placed on or near class A or B explosives<sup>2</sup> storage facilities.<sup>3</sup> Chapter 734 also provides for a civil penalty of up to \$1000 for each violation of these standards.<sup>4</sup>

Under existing law, a person must obtain a permit from a local issuing authority<sup>5</sup> prior to engaging in various activities pertaining to explosives.<sup>6</sup> An issuing authority under Chapter 734 may not issue a permit authorizing the handling or storage of Class A or B explosives in a building, unless the building has the required caution placards.<sup>7</sup>

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1. CAL. HEALTH & SAFETY CODE § 12081 (amended by Chapter 734). *See id.* § 12000 (West Supp. 1990) (definition of explosives).

2. *See* 46 C.F.R. §§ 146.20-7, 146.20-9 (1989) (definition of Class A and B explosives).

3. CAL. HEALTH & SAFETY CODE § 12081(g) (amended by Chapter 734). The placards must conform to the requirements established in Article 77 of the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc. or similar standards. *Id.*

4. *Id.* § 12092 (enacted by Chapter 734).

5. *See id.* § 12007 (West Supp. 1990) (definition of issuing authority).

6. *Id.* § 12101(c)(1). *See also id.* § 12101(a) (enumeration of various activities).

7. *Id.* § 12101(i) (amended by Chapter 734).



## Health and Welfare; facilities for life threatening illnesses and pediatric day health and respite care

Health and Safety Code §§ 1760, 1760.2, 1760.4, 1760.6, 1760.8, 1761.2, 1761.4, 1761.6, 1761.8 (new); §§ 1250, 1250.1, 1265.7, 1266, 1267.9, 1267.13, 1418 (amended).  
AB 3413 (Polanco); 1990 STAT. Ch. 1227

Existing law allows congregate living health (CLH) facilities<sup>1</sup> to provide nursing care services for persons with various types of illnesses or disabilities.<sup>2</sup> Chapter 1227 expands the care provided by CLH facilities to include services for persons suffering from life threatening illnesses.<sup>3</sup> Chapter 1227 limits the number of beds allowed in a CLH facility catering to persons with life threatening illnesses<sup>4</sup> and controls the number of licensed facilities in a physical area.<sup>5</sup>

Existing law requires that the State Department of Health Services (Department) regulate various health facilities.<sup>6</sup> Chapter 1227 requires the Department to create a regulatory program for a new long-term health facility,<sup>7</sup> to be identified as a pediatric day health and respite care facility (facility),<sup>8</sup> in order to serve the needs of medically fragile<sup>9</sup> and terminally ill children.<sup>10</sup> Under

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1. See CAL. HEALTH & SAFETY CODE § 1250(i)(1) (amended by Chapter 1227) (definition of congregate living health facility).

2. *Id.* § 1250(i)(2) (amended by Chapter 1227). Services are provided for persons who are mentally alert but ventilator dependent, terminally ill, or catastrophically and severely disabled. *Id.*

3. *Id.* § 1250(i)(2)(B) (amended by Chapter 1227). A life threatening illness is an illness that can lead to a possibility of death within five years, as stated in writing by the person's physician. *Id.*

4. See *id.* § 1250(i)(4)(B) (amended by Chapter 1227) No more than 25 beds are allowed for terminally ill persons in a CLH facility not operated by the city or county, in a county with a population of more than 500,000). *Id.*

5. *Id.* § 1267.9(b)(2) (amended by Chapter 1227) (requirements to prevent overconcentration of CLH facilities).

6. CAL. HEALTH & SAFETY CODE § 1250.1 (amended by Chapter 1227).

7. See *id.* § 1418 (amended by Chapter 1227) (definition of a long-term health facility).

8. See *id.* § 1760.2(a) (enacted by Chapter 1227) (definition of pediatric day health care and respite facility).

9. See *id.* § 1760.2(b) (enacted by Chapter 1227) (definition of medically fragile).

10. *Id.* § 1760 (enacted by Chapter 1227).

Chapter 1227, the Department must establish licensing<sup>11</sup> regulations for these facilities that include minimum safety and employee training standards,<sup>12</sup> services to be provided to children,<sup>13</sup> and admission criteria<sup>14</sup> for accepting children.<sup>15</sup>

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## Health and Welfare; family planning services

Welfare and Institutions Code §§ 14500.5, 14509, 14509.1, 14510 (new).

AB 99 (Bronzan); 1990 STAT. Ch. 1  
(Effective February 1, 1990)

The legislature, in enacting Chapter 1, declares that family planning services are valuable to improve reproductive health and to reduce the need for abortions.<sup>1</sup> Chapter 1 requires the Department of Health Services (Department) to enter into agreements with contractors<sup>2</sup> to provide family planning services.<sup>3</sup> Chapter 1 prohibits any funds given to family planning contractors

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11. See *id.* § 1760.2(f) (enacted by Chapter 1227) (definition of license).

12. See *id.* § 1760.4(a) (enacted by Chapter 1227) (minimum standards include standards for safety and sanitation of the physical plant and training and staffing of personnel).

13. See *id.* § 1760.6(a) (enacted by Chapter 1227) (services that must be provided include medical, nursing, pharmacy, nutrition, socialization, and developmentally appropriate activities); § 1760.6(b) (enacted by Chapter 1227). The additional services that may be provided include physical therapy, developmental services, occupational speech therapy, educational and psychological services, respite care, instruction for parents or guardians, and comprehensive case management. *Id.* See also *id.* § 1760.2(d) (enacted by Chapter 1227) (definition of respite care).

14. See *id.* § 1760.8(a) (enacted by Chapter 1227) To be admitted, a child must be medically stable, under the care of a physician who approves the plan of care, have current immunization records, and have the consent of parent or legal guardian. *Id.*

15. *Id.* §§ 1760.4, 1760.6, 1760.8 (enacted by Chapter 1227). Annual fees for application or renewal of licenses is based on the number of beds in the facility. *Id.* § 1266(g) (enacted by Chapter 1227).

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1. CAL. WELF. & INS. CODE § 14500.5 (enacted by Chapter 1).

2. See *id.* § 14500.5(e) (enacted by Chapter 1) (definition of contractor).

3. *Id.* § 14509(a) (enacted by Chapter 1). See *id.* § 14500.5(a) (enacted by Chapter 1) (definition of family planning services).

by the Department from being used for abortions or services ancillary to abortions.<sup>4</sup> Under Chapter 1, the contractors must maintain records<sup>5</sup> and allow these records to be made available for inspection.<sup>6</sup> Additionally, Chapter 1 requires the department to establish a copayment system to be used by the contractors.<sup>7</sup>

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## **Health and Welfare; foster family care applicants--criminal record check**

Health and Safety Code § 1522 (amended).  
AB 3373 (Leslie); 1990 STAT. Ch 955

Existing law requires the Department of Social Services (Department) to review the conviction records of foster family home<sup>1</sup> and certified family home<sup>2</sup> applicants.<sup>3</sup> Under existing law,

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4. *Id.* § 14509(b) (enacted by Chapter 1). *See* *Maier v. Roe*, 432 U.S. 464, 480 (1977) (state can constitutionally refuse to give medicaid for any nontherapeutic abortions), *Harris v. McRae*, 448 U.S. 297, 326 (1980) (state can restrict state funding for medically necessary abortions), *Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3058 (1989) (state may constitutionally prohibit use of public health facilities and staff for abortions). *Cf.* 42 C.F.R. § 59.8 (1989) (federal statutory prohibition of use of appropriated funds in program where abortion is a method of family planning). *See generally* Note, *The Title X Family Planning Gag Rule; Can the Government Buy Up Constitutional Rights?* 41 STAN. L. REV. 401 (1989) (discussion of title 42 section 59.8 of the Code of Federal Regulations).

5. *See* CAL. WELF. & INS. CODE § 14509.1(a) (enacted by Chapter 1) (records to be maintained include property, personnel, and financial records).

6. *Id.* § 14509.1(a) (enacted by Chapter 1). Chapter 1 requires that patient records must be retained for seven years and all other records for four years after the expiration of the contract. *Id.* The contractor must arrange for an independent audit of the program. *Id.* § 14509.1(b) (enacted by Chapter 1).

7. *Id.* § 14510(b) (enacted by Chapter 1). Copayments will not be required from any person whose documented family income is at or below of the federal poverty level. *Id.* § 14510(b) (enacted by Chapter 1).

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1. *See* CAL. EDUC. CODE § 56155.5(b) (West 1989) (definition of foster family home).

2. *See* CAL. HEALTH & SAFETY CODE § 1506(d) (West Supp. 1990) (definition of certified family home).

3. *Id.* § 1522 (amended by Chapter 955).

the Department is required to review both the conviction and arrest records of prospective adoptive parents.<sup>4</sup> Chapter 955 grants the foster or certified family home applicant the option of authorizing the release of a full criminal record which includes both convictions and arrests.<sup>5</sup> The full criminal record authorized by Chapter 955 may be used for adoption clearance purposes by the department or by a licensed adoption agency.<sup>6</sup>

VCM

## Health and Welfare; fragrance advertising inserts

Health and Safety Code § 26470 (new).

AB 2709 (Burton); 1990 STAT. Ch. 274

Support: California Nurses Association; Coalition for Alternatives in Nutrition and Healthcare, Inc.; National Center for Environmental Health Strategies

Under existing law, the Department of Health Services regulates the advertisement of food, drugs, and cosmetics.<sup>1</sup> With the enactment of Chapter 274, any fragrance advertising insert<sup>2</sup> included in a periodical<sup>3</sup> must be manufactured using only microencapsulated oils on specific paperstock.<sup>4</sup> Chapter 274 requires that glue tabs or binders be utilized in order to prevent

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4. CAL. CIV. CODE § 226.55 (West Supp. 1990).

5. CAL. HEALTH & SAFETY CODE § 1522(f) (amended by Chapter 955)

6. *Id.* The stated legislative intent is to simplify the procedure for a foster or certified home applicant who later decides to adopt. *Id.*

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1. See CAL. HEALTH & SAFETY CODE §§ 26460-26469 (West 1984 & Supp. 1990).

2. See *id.* § 26470(a) (enacted by Chapter 274) (definition of fragrance advertising insert).

3. See *id.* (enacted by Chapter 274) (periodicals include newspapers, magazines, mailings, and any other periodically printed material).

4. *Id.* (enacted by Chapter 274). The specified paperstock used in the fragrance advertising inserts must have 20 Sheffield units or 172 Gurley-Hill units maximum porosity. *Id.*

accidental exposure to the fragrance.<sup>5</sup> Chapter 274 also imposes a \$100 fine for violation of this provision.<sup>6</sup>

VCM

## **Health and Welfare; hazardous materials--emergency response**

Health and Safety Code § 25507.2 (new); § 25503.5 (amended).  
Vehicle Code § 2416 (amended).

SB 2858 (Garamendi); 1990 STAT. Ch. 824

Sponsor: San Joaquin County

Support: California Conference of Environmental Health, San Joaquin Fire Chiefs' Association

Opposition: Legislative Oversight Committee to the California Peace Officers' Association, California Police Chiefs' Association, and California State Sheriffs' Association

Under existing law, a business that handles hazardous materials<sup>1</sup> in specified quantities<sup>2</sup> must develop a business plan for responding to any hazardous materials release.<sup>3</sup> Chapter 824 extends this requirement to business and governmental agencies

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5. *Id.* (enacted by Chapter 274). *See generally* USA Today, Dec. 18, 1989, at 12A (alleging many individuals have suffered health problems, such as migraine headaches, asthma, and blurred vision when unintentionally exposed to the fragrance advertising inserts); N.Y. Times, Dec. 6, 1989, § B, at 3, col. 2 (discussing New York legislation requiring smell-proof sealants for the perfume inserts).

6. CAL. HEALTH & SAFETY CODE § 26470(b) (enacted by Chapter 274). An event of mass mailing constitutes one violation. *Id.* The penalty for a general violation, pursuant to California Health and Safety Code section 26801, of the food, drug, and cosmetic law does not apply to Chapter 274. *Id.*

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1. *See* CAL. HEALTH & SAFETY CODE § 25501(j) (West Supp. 1990) (definition of hazardous materials).

2. *See id.* § 25503.5(a) (amended by Chapter 824) (requiring a response plan if a business handles hazardous materials equal to or greater than a total weight of 500 pounds, or a total volume of either 55 gallons for liquids or 200 cubic feet at standard temperature and pressure (for compressed gasses)).

3. *Id.*

that handle radioactive material in an amount necessitating an emergency plan under federal law.<sup>4</sup>

Under existing law, an agency administering emergency response laws must establish a plan for responding to the actual or threatened release of hazardous material within the agency's jurisdiction.<sup>5</sup> Chapter 824 authorizes administering agencies to train for and respond to these contingencies.<sup>6</sup>

Existing law allows the California Highway Patrol Commissioner to issue authorized emergency vehicle permits to certain vehicles when the vehicles are used in responding to fire or law enforcement emergency calls.<sup>7</sup> Chapter 824 allows the Commissioner to issue these permits to specified hazardous materials response team vehicles.<sup>8</sup>

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4. *Id.* See 10 C.F.R. §§ 30.1-30.72, 40.1-40.81, 70.1-70.71 (1990) (describing hazardous materials and specifying the federal requirements for emergency plans).

5. CAL. HEALTH & SAFETY CODE § 25503(c) (West Supp. 1990) (noting that an area plan is not a statute, ordinance, or regulation as these terms are used in California Evidence Code section 669). *Cf.* LA. REV. STAT. ANN. § 30:2365.A.(7) (West 1990) (requiring the state environmental authority to assist localities in developing emergency response plans); OKLA. STAT. ANN. tit. 63, § 1-2004.14 (West 1990) (requiring the state Department of Health to prepare an emergency response plan for controlled industrial waste and hazardous materials spills).

6. CAL. HEALTH & SAFETY CODE § 25507.2 (amended by Chapter 824).

7. CAL. VEH. CODE § 2416(a) (amended by Chapter 824).

8. *Id.* § 2416(a)(10) (amended by Chapter 824) (authorizing permits for city, county, or district vehicles designated by a local ordinance as hazardous materials response team vehicles).

## Health and Welfare; hospice licensing

Health and Safety Code §§ 1745, 1746, 1747, 1748, 1749, 1749.5, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759 (new).  
SB 2622 (Maddy); 1990 STAT. Ch. 1343

Chapter 1343 establishes licensing requirements for the operation of a hospice.<sup>1</sup> Under Chapter 1343, a licensed hospice must provide the following: (1) Skilled nursing services,<sup>2</sup> (2) social and counseling services,<sup>3</sup> (3) medical direction,<sup>4</sup> (4) bereavement services,<sup>5</sup> (5) volunteer services,<sup>6</sup> and (6) inpatient care arrangements.<sup>7</sup> Chapter 1343 provides for periodic inspections of licensed hospices by the Department of Health Services (Department),<sup>8</sup> and requires licenses to be renewed every two

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1. See CAL. HEALTH & SAFETY CODE §§ 1745-1759 (enacted by Chapter 1343) (establishing the California Hospice Licensure Act of 1990). Hospice care is a specialized form of multidisciplinary health care which provides various services, including medical, psychological, social, and spiritual to a terminally ill patient and the patient's family. *Id.* § 1746(g) (enacted by Chapter 1343). See generally Sheehan, *Hospice Licensure*, CARING, Aug. 1988, at 12 (philosophical and conceptual framework of hospice licensure). To qualify for licensure, the applicant or person in charge of the hospice must be of good moral character. CAL. HEALTH & SAFETY CODE § 1749(a)(1) (enacted by Chapter 1343).

2. See CAL. HEALTH & SAFETY CODE § 1746(g) (enacted by Chapter 1343) (definition of skilled nursing services).

3. See *id.* § 1746(h) (enacted by Chapter 1343) (definition of social services and counseling services).

4. See *id.* § 1746(d) (enacted by Chapter 1343) (definition of medical direction).

5. See *id.* § 1746(a) (enacted by Chapter 1343) (definition of bereavement services).

6. See *id.* § 1746(j) (enacted by Chapter 1343) (definition of volunteer services).

7. *Id.* § 1749(b) (enacted by Chapter 1343). See *id.* § 1746(c) (enacted by Chapter 1343) (definition of inpatient care arrangements). If a hospice is in substantial compliance with federal regulations under the Medicare hospice program, the Department of Health Services will not review the licensing requirements. *Id.* § 1749.5 (enacted by Chapter 1343). See 42 C.F.R. § 418 (1988) (applicable federal regulations).

8. CAL. HEALTH & SAFETY CODE § 1752(a) (enacted by Chapter 1343).

years.<sup>9</sup> Chapter 1343 exempts volunteer hospices<sup>10</sup> and small and rural hospices<sup>11</sup> from these licensing requirements.<sup>12</sup>

Chapter 1343 allows the Department to deny, revoke, or suspend a hospice license for a violation of any state rule or regulation;<sup>13</sup> any conviction of a felony or conviction of aiding, abetting, or permitting the commission of a felony; or any misrepresentation of a material fact on the license application.<sup>14</sup> Furthermore, any person who violates any provision of Chapter 1343 is guilty of a misdemeanor.<sup>15</sup>

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## Health and Welfare; language interpreters in hospitals

Health and Safety Code § 1259 (new).  
SB 1840 (Kopp); 1990 STAT. Ch. 672

Chapter 672 requires general acute care hospitals<sup>1</sup> to review existing policies regarding language interpreters<sup>2</sup> and to create a language assistance service policy.<sup>3</sup> The policy must provide for

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9. *Id.* § 1751 (enacted by Chapter 1343).

10. *See id.* § 1747(c) (enacted by Chapter 1343) (definition of volunteer hospice). A volunteer hospice must disclose to the public that it is not required to be licensed, is not regulated by the state, and that all complaints against the hospice must be directed to the local district attorney. *Id.* § 1748(c) (enacted by Chapter 1343).

11. *See id.* § 1747(d) (enacted by Chapter 1343) (definition of small and rural hospice). A small and rural hospice may provide skilled nursing services and may use the title "volunteer hospice," but is exempt from the disclosure requirement. *Id.* § 1747(d) (enacted by Chapter 1343).

12. *Id.* § 1747(c)-(d) (enacted by Chapter 1343).

13. *See id.* § 1753 (enacted by Chapter 1343) (allowing the state to promulgate rules and regulations as necessary to comply with the provisions of Chapter 1343).

14. *Id.* § 1755(a) (enacted by Chapter 1343).

15. *Id.* § 1757 (enacted by Chapter 1343).

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1. *See* CAL. HEALTH & SAFETY CODE § 1250(a) (West 1990) (definition of general acute care hospital).

2. *See id.* § 1259(b)(1),(2) (enacted by Chapter 672) (definition of interpreters).

3. *Id.* § 1259(c)(2) (enacted by Chapter 672).



interpreters to be available to patients when a language communication barrier<sup>4</sup> is present.<sup>5</sup> Under Chapter 672, a hospital must identify and record a patient's primary language.<sup>6</sup> Additionally, Chapter 672 requires hospitals to post notices advising patients that interpreters are available.<sup>7</sup> Chapter 672 requires the hospital to maintain an updated list of qualified interpreters, and to review patient admission forms to determine which need to be translated to languages other than English.<sup>8</sup> The hospital may provide its nonbilingual staff with standardized picture and phrase sheets and may develop community liaison groups to ensure the adequacy of the interpreter services.<sup>9</sup>

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4. See *id.* § 1259(b)(2) (enacted by Chapter 672) (definition of language or communication barrier). The provisions of Chapter 672, regarding spoken language, apply only if the persons speaking the language as their primary language comprise at least five percent of the population of the geographical area served by the hospital or of the actual patient population of the hospital. *Id.* § 1259(b)(2)(A) (enacted by Chapter 672).

5. *Id.* § 1259(c) (enacted by Chapter 672). The patient has the option to choose a family member or friend as interpreter. *Id.* § 1259(c)(2) (enacted by Chapter 672).

6. *Id.* § 1259(c)(4) (enacted by Chapter 672). The patient's primary language and dialect must be recorded on either the patient's charts, hospital bracelet, or bedside notice. *Id.*

7. *Id.* § 1259(c)(3) (enacted by Chapter 672). Notices must advise patients of the procedure for obtaining interpreters and the telephone numbers where complaints can be filed, including a Telecommunication Device for the Deaf (T.D.D.) number for the hearing impaired. *Id.*

8. *Id.* § 1259(c)(5), (7) (enacted by Chapter 672).

9. *Id.* § 1259(c)(8),(9) (enacted by Chapter 672). The hospital is required to forward to the Department of Health Services, on an annual basis, a copy of its language assistance policy and a description of its efforts to decrease the language barrier between patients and staff. *Id.* § 1259(c)(2) (enacted by Chapter 672). The legislature, in enacting Chapter 672, recognizes that all residents have the right to health care services and that it has become necessary to provide interpreters to assist with communication between hospital staff and patients. *Id.* § 1259(a) (enacted by Chapter 672).

## Health and Welfare; long-term health care facilities

Health and Safety Code §§ 1327.1, 1327.2, 1327.3 (new); §§ 1267.5, 1417.2 (amended).  
SB 1871 (Hart); 1990 STAT. Ch. 940

Existing law regulates the ownership of long-term health care facilities.<sup>1</sup> Under Chapter 940, no person may acquire a five percent or greater beneficial interest in a management company that is under contract with a licensee of a long-term health care facility, without prior written approval by the State Department of Health Services (Department).<sup>2</sup> Existing law allows denial of a license application for a long-term health care facility in certain circumstances.<sup>3</sup> Chapter 940 expands the circumstances for denial of a license application to include ownership at the time the court orders a receiver to manage the facility.<sup>4</sup>

Existing law authorizes the court to order the appointment of a receiver or temporary receiver to manage the long-term health care facilities.<sup>5</sup> Under Chapter 940, the Department may include a consortium of community agencies on the list of qualified receivers so long as at least one of the agencies is a licensed nursing home administrator.<sup>6</sup> Chapter 940 mandates that the Department

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1. See CAL. HEALTH & SAFETY CODE § 1267.5 (amended by Chapter 940). See *id.* § 1326 (West Supp. 1990) (definition of long-term health care facility).

2. *Id.* § 1267.5(b) (amended by Chapter 940). Under existing law, the identical provisions apply to the acquisition of an ownership interest in a corporation or partnership licensed to operate such a facility. *Id.*

3. *Id.* § 1267.5(c) (amended by Chapter 940.) A license application may be denied where the applicant was an officer, general partner, or owner of a five percent or greater beneficial interest in a licensee or a management company under contract with a licensee of a skilled nursing facility, intermediate care facility, community care facility, or residential care facility for the elderly, at the time that a violation was committed which resulted in the license being revoked or suspended. *Id.*

4. *Id.* § 1267.5(c) (amended by Chapter 940).

5. *Id.* § 1327 (West 1990). The Department establishes a list of qualified receivers. *Id.* § 1327(b). After a hearing determining that the appointment of a receiver is warranted, the court may order a temporary receiver. *Id.*

6. *Id.* § 1327.3 (enacted by Chapter 940). The court is allowed to approve multiple individuals as receivers where at least one is a licensed nursing home administrator or other responsible person or entity. *Id.*

investigate the circumstances warranting the appointment of a receivership.<sup>7</sup> Additionally, Chapter 940 requires the Department to hold an informational meeting for those affected by the appointment of a receiver.<sup>8</sup> Chapter 940 also establishes a civil penalty fund.<sup>9</sup>

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7. *Id.* § 1327.1 (enacted by Chapter 940). The investigation must be completed within 30 days of receiving the complaint. *Id.* The investigation results must be documented in the Department's facility file. *Id.*

8. *Id.* § 1327.2 (enacted by Chapter 940). *Cf. O'Bannon v. Town Court Nursing Home*, 447 U.S. 773, 774 (1980) (holding that nursing home residents do not have a constitutional right to a hearing prior to state or federal agency termination of the license of the health care facility). *See generally* *Newland v. Kizer*, 209 Cal. App. 3d 647, 649, 257 Cal. Rptr. 450, 452 (1989) (holding that the Department has the legal duty to prevent transfer trauma by requiring the nursing home to give its Medi-Cal residents an additional 60 days to relocate or seek appointment of a receiver); Glynn, *An Advocate's Guide to Health Care Facility Receivership*, 16 GONZ. L. REV. 695, (1981) (advocating appointment of receivers as both an alternative to closing the facility and a sanction against poor management); Annas, 'Transfer Trauma' & *The Right to a Hearing*, HASTINGS CENTER REP., Dec. 1980, at 23 (stating that the avoidance of "transfer trauma", the physical and psychological injury suffered by the patient when involuntarily moved from a residential care setting, is the main rationale for appointing receivers to long-term health care facilities).

9. CAL. HEALTH & SAFETY CODE § 1417.2 (amended by Chapter 940). The Department must deposit civil penalties imposed for violations relating to the long-term health facilities into the Health Facilities Citation Penalties Account. *Id.* The collected funds will be used for the costs of relocation, maintenance, reimbursement of resident's personal funds if the facility's revenues are inadequate, and for the informational meetings costs dictated by California Health and Safety Code section 1327.2. *Id.*

## Health and Welfare; mental health-- conservatorships

Welfare and Institutions Code §§ 5357, 5358, 5358.2 (amended).

SB 2138 (Russell); 1990 Cal. STAT. Ch. 180

Support: California Alliance for Mental Illness, San Diego City Superior Court (Department of Mental Health Services), California Association of Mental Health Directors, California Association of Hospitals and Health Systems

Opposition: American Civil Liberties Union, California Council on Mental Health, California Network of Mental Health Clients

Existing law vests general and specific powers and duties in conservators.<sup>1</sup> Existing law further requires a conservatorship<sup>2</sup> investigation<sup>3</sup> officer, upon completion of his or her investigation, to submit a report to the court conducting a conservatorship hearing for a gravely disabled<sup>4</sup> person.<sup>5</sup> The report must contain a recommendation either for or against restrictions being placed upon the conservatee's right to refuse or consent to medical treatment unrelated to the disability, but which is necessary for the existing or continuing treatment of a medical condition.<sup>6</sup> Under Chapter 180, the report's recommendation may relate only to the

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1. See generally CAL. PROB. CODE § 2401 (West 1981) (requiring conservators to exercise ordinary care and diligence in managing and controlling an estate). See also *id.* §§ 2404 (requiring conservators to pay support for or debts of conservatees); 2406 (West Supp. 1990) (allowing conservators to submit disputes between conservators and third parties to arbitration).

2. See CAL. WELF. & INST. CODE § 5350 (West Supp. 1990) (conservator appointment and procedure); CAL. PROB. CODE §§ 1801 (West Supp. 1990) (appointment of conservator or limited conservator); 1410 (West 1981) (conservator includes limited conservator); 1411 (conservatee includes limited conservatee).

3. See CAL. WELF. & INST. CODE § 5008(g) (West Supp. 1990) (definition of conservatorship investigation).

4. See *id.* § 5008(h) (definition of gravely disabled). "Gravely disabled" is not an unconstitutionally vague or overbroad term; the standard requires a "specifically defined and diagnosed mental disorder and inability to care for one's basic needs". Estate of Chambers, 71 Cal. App. 3d 277, 278, 139 Cal. Rptr. 357, 358 (1977).

5. CAL. WELF. & INST. CODE § 5356 (West Supp. 1990).

6. *Id.* § 5357(e) (amended by Chapter 180). See also *id.* § 5325 (West 1984) (enumeration of conservatee's rights which must be posted conspicuously).

conservatee's right to refuse or consent to routine medical treatment unrelated to the disability,<sup>7</sup> but the medical treatment need not be necessary for the treatment of an existing or continuing medical condition.<sup>8</sup>

Existing law allows a conservator, upon obtaining a court order, to require a conservatee to receive medical treatment which is unrelated to the disability, but which is necessary for the treatment of an existing or continuing medical condition.<sup>9</sup> Chapter 180 broadens the conservator's discretionary power by allowing the conservator to obtain a court order under which the conservator may require the conservatee to receive routine medical treatment unrelated to an existing medical condition.<sup>10</sup>

Under existing law, a conservator must obtain a court order to require a conservatee to receive medical treatment which is required but not specifically authorized by the court.<sup>11</sup> Under Chapter 180, a court order is necessary only if the conservator has

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7. *Id.* § 5357(e) (amended by Chapter 180).

8. *Id.* (requiring the court to make a specific determination on this issue). *Id.* See *O'Connor v. Donaldson*, 422 U.S. 563, 573-76 (1975) (holding that a state may not justify an individual's confinement solely on the basis of providing necessary medical treatment); *Conservatorship of Walker*, 206 Cal. App. 3d 1572, 1578, 254 Cal. Rptr. 552, 555 (1989) (holding that a conservatee's "gravely disabled" condition, by itself, does not satisfy the evidentiary requirements necessary for restrictions to be imposed). See generally Comment, *Civil Commitment of the Mentally Ill in California: The Lanterman-Petris-Short Act*, 7 LOY. L.A.L. REV. 93 (1974) (advocating that an increased unchallenged reliance upon expert psychiatric testimony may pose a threat to due process, and thereby undermine the civil litigation system).

9. CAL. WELF. & INST. CODE § 5358(b) (amended by Chapter 180).

10. *Id.* See *Keyhea v. Rushen*, 178 Cal. App. 3d 526, 526-27, 536, 223 Cal. Rptr. 746, 746-47, 751 (1986) (holding that mentally-disordered conservatees detained involuntarily may refuse long-term psychotropic medication, absent a judicial determination of their incompetency to do so).

11. CAL. WELF. & INST. CODE § 5358.2 (amended by Chapter 180).

not otherwise been authorized to compel the conservatee to receive the medical treatment.<sup>12</sup>

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## **Health and Welfare; motor vehicle inspection program--smog checks**

Health and Safety Code §§ 44017.3, 44017.5, 44036.8 (new).  
AB 3106 (Klehs); 1990 STAT. Ch. 1324  
Sponsor: California Service Station and Automotive Repair  
Association

Existing law establishes maximum repair costs necessary to bring an automobile into compliance with emission control standards.<sup>1</sup> Chapter 1324 requires smog check stations to display a sign notifying customers of repair cost limitations.<sup>2</sup> If the station does not perform licensed smog check repairs, Chapter 1324 further requires the station to conspicuously post a sign which states that

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12. *Id.* See *Foy v. Greenblott*, 141 Cal. App. 3d 1, 11, 190 Cal. Rptr. 84, 91 (1983) (holding that a conservator who is in doubt over his or her authority should petition the court for clarification before proceeding). Cf. ARIZ. REV. STAT. ANN. § 36-543.D (1989) (requiring an annual examination and review of a gravely disabled person undergoing court-ordered medical treatment to determine the need for continued treatment and/or conservatorship). But cf. MINN. STAT. § 525.56, Subd. 3(4)(a) (Supp. 1989) (allowing a conservator to obtain a court order to compel conservatee to undergo psychosurgery, electroshock, sterilization, or experimental treatment of any kind; however, the treatment may not violate the conservatee's known conscientious, religious, or moral beliefs).

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1. CAL. HEALTH & SAFETY CODE § 44017(a) (West Supp. 1990). See *id.* § 39027 (West 1986) (definition of emission standard).

2. *Id.* § 44017.3(a) (enacted by Chapter 1324). See *id.* § 44017.3(c) (enacted by Chapter 1324) (sign wording requirements).

mechanics are not available for this purpose and smog-related repairs are not performed.<sup>3</sup>

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## **Health and Welfare; nonprescription drug labels**

Health and Safety Code § 26637.5 (new).  
AB 2713 (Moore); 1990 STAT. Ch 829

Existing law regulates prescription<sup>1</sup> drug<sup>2</sup> labels.<sup>3</sup> Chapter 829 requires manufacturers selling nonprescription drugs in California to assess the labels on their products, and allows them to modify the labels for optimum readability and clarity.<sup>4</sup>

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3. *Id.* § 44017.3(a) (enacted by Chapter 1324).

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1. *See* CAL. HEALTH & SAFETY CODE § 26027 (West 1984) (definition of prescription).

2. *See id.* § 26010 (definition of drug).

3. *Id.* § 26637. *See id.* § 26016 (definition of label).

4. *Id.* § 26637.5(a) (enacted by Chapter 829). Under Chapter 829, the Nonprescription Drug Manufacturers Association must submit a progress report to the Department of Health Services and the advisory committee on a quarterly basis. *Id.* The stated intent of the Legislature in enacting Chapter 829 is to increase the readability of nonprescription drug labels and warnings to protect the health and safety of consumers. 1990 Cal. Stat. ch. 829, sec. 1, at \_\_\_\_.

## Health and Welfare; notification of pesticide application

Food and Agriculture Code § 5774.5 (new); §§ 5771, 5775, 5777 (amended); Health and Safety Code § 39664 (new).  
AB 4209 (Allen); 1990 STAT. Ch. 1678

Existing law requires the Director of Food and Agriculture (Director)<sup>1</sup> or any county agricultural commissioner to provide notice to residents and practicing physicians before aerial application of any economic poison<sup>2</sup> in an urban area.<sup>3</sup> Chapter 1678 also requires notification<sup>4</sup> of the local broadcast and print media, and the cities and counties in the affected area.<sup>5</sup> Under prior law, if the date of the aerial application of the economic poison is changed, except due to a weather-related problem or an emergency, a revised notice must be distributed to the local broadcast media.<sup>6</sup> Chapter 1678 deletes the weather-related and emergency exceptions and also requires the Director to send a revised notice to the local print media.<sup>7</sup>

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1. See CAL. FOOD & AGRIC. CODE § 102 (West 1986) (provision for the Director of Food and Agriculture).

2. See *id.* § 12753 (West Supp. 1990) (definition of economic poison).

3. *Id.* § 5771 (amended by Chapter 1678) (notification of an aerial application of economic poison).

4. See *id.* § 5776 (West 1986) (required contents of the notification). Existing law requires that the notice be given in English and Spanish if over five percent of the population in the affected area are Spanish-speaking. *Id.* § 5777 (amended by Chapter 1678). Chapter 1678 requires that the notice be given in English and another language in an area where five percent or more of the population in that area speak the other language. *Id.* § 5777 (amended by Chapter 1678).

5. *Id.* § 5771 (amended by Chapter 1678) (local broadcast and print media). *Id.* § 5774.5 (enacted by Chapter 1678) (cities and counties). Chapter 1678 also provides that the state Department of Health Services must conduct an epidemiological study of the long-term health effects of the particular pesticide application. *Id.* § 39644 (enacted by Chapter 1678).

6. 1984 Cal. Stat. ch. 1195, sec. 1, at 4107 (enacting CAL. FOOD & AGRIC. CODE § 5775). The revised notice must be given to at least two radio stations that have the broadest coverage in the area to be eradicated. *Id.*

7. *Id.* § 5775 (amended by Chapter 1678) (the application may not take place within 96 hours of the change).



## Health and Welfare; prenatal testing and prenatal diagnosis centers

Health and Safety Code §§ 290, 291, 292, 293 (repealed); §§ 156, 156.1, 156.2, 156.3 (new).

SB 1008 (Rosenthal); 1990 STAT. Ch. 26

Support: Organization of Area Boards on Developmental Disabilities

Opposition: Women's Lobby

Chapter 26 extends the scope of the Hereditary Disorders Act<sup>1</sup> and requires the State Department of Health Services (Department)<sup>2</sup> to administer a statewide prenatal testing program for genetic disorders and birth defects.<sup>3</sup> The testing program includes the use of ultrasound, amniocentesis, chorionic villus sampling, and blood testing for genetic disorders and birth defects.<sup>4</sup> Under Chapter 26, the Department must do the following: (1) Define eligibility criteria for the prenatal testing program;<sup>5</sup> (2) educate physicians, surgeons, and the public about the prenatal testing program and its availability;<sup>6</sup> (3) provide genetic counseling in conjunction with prenatal testing;<sup>7</sup> (4) designate a sufficient

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1. See CAL. HEALTH & SAFETY CODE §§ 150-155 (West Supp. 1990) (violation of any of the provisions of the Act is a misdemeanor).

2. See *id.* § 20 (West 1979) (definition of Department of Health Services).

3. *Id.* § 156 (enacted by Chapter 26).

4. *Id.* Under prior law, the Department administered a prenatal testing program using only amniocentesis. 1978 Cal. Stat. ch. 1272, sec. 3, at 4132 (amending CAL. HEALTH & SAFETY CODE §§ 290, 291, 292, 293) (repealed by Chapter X). See generally Damme, *Controlling Genetic Disease Through Law*, 15 U.C. DAVIS L. REV. 801 (1982) (arguing that private medical malpractice actions and voluntary measures may be more effective than state efforts to control genetic disease, since most state genetic screening programs present practical and constitutional problems); Note, *Genetic Malpractice: Avoiding Liability* 54 U. CIN. L. REV. 857 (1986) (describing acts and omissions that may lead to liability in the genetic counseling field, and suggesting ways to reconcile effective medical practice with steps for avoiding malpractice). See, e.g., *Turpin v. Sortini*, 31 Cal. 3d 220, 182 Cal. Rptr. 337, 643 P.2d 954 (1982) (wrongful birth action brought against physician for failing to advise parents of the possibility of hereditary deafness of their second child).

5. CAL. HEALTH & SAFETY CODE § 156.1(a) (enacted by Chapter 26). The Department must also define the conditions and factors that result in a high risk of detectable genetic disorder or birth defect. *Id.*

6. *Id.* § 156.1(b) (enacted by Chapter 26).

7. *Id.* § 156.1(c) (enacted by Chapter 26).

number of prenatal diagnosis centers to satisfy the need for prenatal testing;<sup>8</sup> and (5) administer a subsidy grant program for approved nonprofit prenatal diagnosis centers.<sup>9</sup> Diagnosis centers must meet standards developed by the Department and agree to accept patients from state programs<sup>10</sup> in order to qualify for state reimbursement.<sup>11</sup> Chapter 26 mandates that a person's participation in the prenatal testing program must be voluntary, and not a prerequisite for receiving assistance from another program.<sup>12</sup>

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## **Health and Welfare; public social services--licensed maternity homes**

Welfare and Institutions Code § 16151 (repealed and new); §§ 16148.05, 16148.10, 16148.13, 16148.15 (new); §§ 16145, 16146, 16147, 16148 (amended).

AB 3805 (Bronzan); 1990 STAT. Ch. 1636

Support: State Social Services Advisory Board, California Association of Catholic Hospitals

Existing law authorizes the funding of licensed maternity homes that provide counseling and residential treatment services to

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8. *Id.* § 156.1(d) (enacted by Chapter 26). Prenatal diagnosis centers must have genetic testing equipment and trained staff to provide genetic counseling, perform prenatal diagnostic tests, and interpret results. *Id.*

9. *Id.* § 156.1(e). Grants are awarded on the basis of the number of low-income women referred to the center, the number of prenatal diagnoses conducted, and the estimated unmet need for prenatal testing in a given area. *Id.*

10. *See id.* § 156.3 (enacted by Chapter 26) (the patients include, but are not limited to, patients from the following State programs: Medi-Cal, Regional Centers, Maternal and Child Health, California Children's Services, Genetically Handicapped Persons, and Family Planning).

11. *Id.*

12. *Id.* § 156.2 (enacted by Chapter 26).

unmarried pregnant women.<sup>1</sup> Chapter 1636 reduces the maximum age for maternity home services from women under the age of twenty-one<sup>2</sup> to women under eighteen years of age.<sup>3</sup> Chapter 1636 additionally requires a licensed maternity home to perform a "level of care assessment" prior to admission to determine the proper placement of clients.<sup>4</sup>

The placement of a client in a maternity home is not contingent on contributions by the client's parents.<sup>5</sup> Chapter 1636, however, requires the provider to obtain financial support for a client residing in a maternity home upon determining that: (1) The annual income of the client's family exceeds the federal Poverty Index by at least 200 percent,<sup>6</sup> and (2) a request for family contribution would not jeopardize the client's use of the maternity home services.<sup>7</sup>

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1. CAL. WELF. & INST. CODE § 16145 (amended by Chapter 1636). The legislature intends to provide a choice in making family planning decisions, to reduce the number of welfare mothers, reduce the school drop-out rate, and to promote higher birth weight babies. *Id.* Cf. 42 U.S.C. § 300 (1988) (project grants and contracts for family planning services).

2. 1977 Cal. Stat. ch. 1190, sec. 2, at 3919 (enacting CAL. WELF. & INST. CODE § 16146) (amended by Chapter 1636).

3. CAL. WELF. & INST. CODE § 16146(a) (amended by Chapter 1636). A client who is 18 years old will remain eligible as long as she is pregnant and attending school. *Id.*

4. *Id.* § 16146(c)(1) (amended by Chapter 1636) (results of assessment to be maintained in client's file). The Department of Health Services must annually review client files and prepare a report on maternity home admissions and services provided. *Id.* § 16148.10(c) (enacted by Chapter 1636).

5. *Id.* § 16147(c) (amended by Chapter 1636).

6. *Id.* § 16147(b)(1) (amended by Chapter 1636) (family income adjusted for family size, and determined by reviewing the previous year's federal income tax return for the parent or parents).

7. *Id.* § 16147(b)(2) (amended by Chapter 1636) (requiring that fee be based on a sliding scale developed by the Department of Health Services). The maternity home must forward any parental contributions to the Department to offset the cost of care and services provided by this program. *Id.* 16147(d) (amended by Chapter 1636).

## Health and Welfare; records and information-- confidentiality

Welfare and Institutions Code § 4514 (amended)  
AB 3403 (Mojonnier); 1990 STAT. Ch. 693  
Support: Association of Regional Center Agencies

Under existing law, a regional center<sup>1</sup> must keep all information and records developed during the care of a developmentally disabled person<sup>2</sup> confidential, except in specified situations.<sup>3</sup> Existing law provides that a developmentally disabled person who is able to give informed consent<sup>4</sup> may permit information or records to be released to designated individuals.<sup>5</sup> Professionals involved in the care of a developmentally disabled person cannot be compelled to divulge information revealed by a family member of that person unless that family member executes a valid release.<sup>6</sup> Chapter 693 extends this provision to include marriage, family, and child counselors.<sup>7</sup>

When a developmentally disabled person lacks the capacity to give informed consent, existing law allows the director or designee of a regional center to release information about the developmentally disabled person to that person's attorney.<sup>8</sup> Chapter

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1. See generally CAL. WELF. & INST. CODE §§ 4620-4658 (West 1984 & Supp. 1990) (definition of regional center contracts and responsibilities).

2. See *id.* § 4512(a) (West 1984) (definition of developmental disability).

3. *Id.* § 4514 (amended by Chapter 693) (sets forth situations in which confidential information may be released).

4. See generally *Adoption of Alexander S.*, 44 Cal. 3d 857, 861-862, 750 P.2d 778, 781, 245 Cal. Rptr. 1, 3 (1988) (defining informed consent as based on fully explained available alternatives without coercion, duress, or undue influence).

5. CAL. WELF. & INST. CODE § 4514(b) (amended by Chapter 693).

6. *Id.* § 4514(b) (amended by Chapter 693). Professionals include physicians, psychologists, social workers, nurses, attorneys, and other professionals. *Id.* The same provisions apply when the parent, guardian, or conservator of a minor, ward or conservatee designates in writing persons to whom information may be released. *Id.* § 4514(d) (amended by Chapter 693).

7. *Id.* § 4514(b),(d) (amended by Chapter 693).

8. *Id.* § 4514(j) (amended by Chapter 693). The information may be released upon satisfactory proof that the attorney represents the disabled person. *Id.* Professionals to whom family members have provided confidential information cannot be compelled to reveal information to an attorney without a release from the family member. *Id.*

693 also allows the release of information about a person with a developmental disability to government law enforcement officials when that person is reported lost or missing,<sup>9</sup> or when there is probable cause<sup>10</sup> to believe that the developmentally disabled person has been the victim of or has committed certain crimes.<sup>11</sup> Chapter 693 authorizes the director or designee of a regional center to release information about a person with developmental disabilities when both of the following conditions are met: (1) The requested information is vital for protecting the person's health, safety, and welfare; and (2) the regional center has advised the person or that person's parent, guardian, or conservator about the information release policy.<sup>12</sup> Chapter 693 additionally extends the above confidentiality requirements to state developmental centers.<sup>13</sup>

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9. *Id.* § 4514(p)(1) (amended by Chapter 693) (allows the director or designee of a regional or state developmental center to release information).

10. *See generally* *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (probable cause determined by the totality of the circumstances).

11. *Id.* § 4514(p)(2) (amended by Chapter 693) (applies to the following crimes: murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, and unlawful possession of a weapon).

12. *Id.* § 4514(t) (amended by Chapter 693). These conditions for release apply when the developmentally disabled person or that person's parent, guardian, or conservator fails to respond within a reasonable time or denies the center's request to release information. *Id.* § 4514(t) (amended by Chapter 693). A policy statement in the client's individual program plan satisfies the notice requirement. *Id.* § 4514(t)(2) (amended by Chapter 693). *See id.* § 4646 (West 1984) (definition of individual program plan).

13. *Id.* § 4514 (amended by Chapter 693). *See id.* § 4400.5 (West Supp. 1990) (definition of state development center).

## Health and Welfare; reporting of substance abuse relative to child abuse or neglect

Health and Safety Code §§ 10900, 10901, 10902 (new); Penal Code § 11165.13 (new); § 11166 (amended).  
SB 2669 (Presley); 1990 STAT. Ch. 1603

Existing law requires various groups of persons to report known or suspected incidents of child abuse.<sup>1</sup> Chapter 1603 mandates that a positive toxicology screen at the time of birth is not, in and of itself, sufficient basis for reporting child abuse or neglect.<sup>2</sup>

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1. CAL. PENAL CODE § 11166(a) (amended by Chapter 1603). All child care custodians, health practitioners, and employees of a child protective agency must report to a child protective agency any knowledge or observation of child abuse, when they learn of the abuse in their professional capacity. *Id.*

2. *Id.* § 11165.13 (enacted by Chapter 1603). The positive toxicology screen will be sufficient to lead to an assessment of the needs of the mother and child under section 10901 of the California Health and Safety Code. *Id.* The purpose of the assessment is to determine: (1) The needed services for the mother, child, or family; (2) the level of risk to the child when released to the home; and (3) the level of services and intervention needed to protect the newborn child. CAL. HEALTH & SAFETY CODE § 10901 (enacted by Chapter 1603). If there are other factors that indicate a risk to the child, then a report is to be made to the county welfare department. CAL. PENAL CODE § 11165.13 *But cf.* *In re Troy D.*, 215 Cal. App. 3d 889, 897, 263 Cal. Rptr. 869, 872, (1989) (the court upheld an amended petition to remove Troy D. from his parents' custody based on a positive toxicology test, ruling that this positive test brings the child under section 300(a) of the California Welfare and Institutions code, which applies to minors who have suffered, or are at substantial risk of suffering, physical harm).

## Health and Welfare; residential care facilities

Health and Safety Code §§ 1568.01, 1568.02, 1568.021, 1568.03, 1568.04, 1568.05, 1568.06, 1568.061, 1568.062, 1568.063, 1568.064, 1568.07, 1568.071, 1568.072, 1569.073, 1568.08, 1568.081, 1568.082, 1568.0821, 1568.0822, 1568.083, 1568.0831, 1568.09 (new); § 199.715 (amended).  
AB 3459 (Friedman); 1990 STAT. Ch. 1333

Existing law provides for the licensing and regulation of residential care facilities (facility).<sup>1</sup> Chapter 1333 creates a new class of residential care facilities for persons suffering from chronic, life-threatening illnesses.<sup>2</sup> A facility applying for a license must provide basic services for its residents.<sup>3</sup> If the facility provides financial services for its residents, the facility must have a bond of not less than \$1,000 issued in an amount to be determined by the Department of Social Services (Department), depending on the size of the facility.<sup>4</sup> In addition, a facility

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1. See CAL. HEALTH & SAFETY CODE §§ 1520 (West 1990) (application requirements for a license); 1525 (issuance or denial of a license). See *id.* § 1502(a)(1) (definition of a residential care facility).

2. *Id.* § 1568.02(a) (enacted by Chapter 1333) (state Department of Social Services (Department) must license facilities caring for sufferers of chronic, life-threatening illnesses under a separate category). *Id.* § 1568.01(c)(1)(2) (enacted by Chapter 1333) (a chronic, life-threatening illness is either: (1) A disease with a high likelihood of death, unless the course of the disease is interrupted; or (2) an illness with a potential outcome of death where the end point of medical intervention is survival).

3. *Id.* § 1568.02(b) (enacted by Chapter 1333). The applicant must provide the following basic services: (1) A bedroom with no more than two residents, unless waived by the Department director; (2) usable common areas including recreational areas and shared kitchen space with adequate refrigerator space for storage of medication; (3) nutritional consultations; (4) personal care services; (5) access to case management; (6) individual service plans; (7) admission and discharge procedures; (8) access to psychological support services; (9) access to community-based and county services systems; (10) access to social and emotional support networks; (11) intermittent home health care services; (12) substance abuse services; and (13) securable storage space for personal effects. *Id.*

4. *Id.* § 1568.021(a) (enacted by Chapter 1333). A violation of this provision constitutes cause to revoke the facility's license, however this provision does not apply where the money handled is less than \$50 per resident and less than \$500 for all residents in any month. *Id.* § 1568.021(b)-(c) (enacted by Chapter 1333). The Department may grant a variance for some facilities where the duty to maintain a bond would be such a burden that operations may cease. *Id.* § 1568.021(d) (enacted by Chapter 1333).

applicant must show evidence of written agreements with specified agencies<sup>5</sup> and the ability to provide appropriate services to targeted populations.<sup>6</sup> Under Chapter 1333, a facility applicant may not house more than twenty-five residents.<sup>7</sup> The facility applicant must provide information showing their financial background and proving their compliance with Chapter 1333.<sup>8</sup> The Department must investigate if the facility or any specified persons employed by the facility have been convicted of certain crimes.<sup>9</sup> The Department must issue a license if the facility has complied with

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5. *Id.* § 1568.02(c) (enacted by Chapter 1333). The facility must have a written agreement with a licensed home health agency, a psychosocial services agency (unless the facility provides this service itself), and a substance abuse agency (unless provided by the facility itself). *Id.*

6. *Id.* § 1568.02(d) (enacted by Chapter 1333).

7. *Id.* § 1568.02(e) (enacted by Chapter 1333) (the director of the Department may authorize up to 50 residents). The Department may order the facility to remove any residents who require a higher level of care than the facility is able to provide. *Id.* § 1568.073 (enacted by Chapter 1333). A facility serving six or fewer residents is considered residential-use of property, and is subject to all local residential ordinances. *Id.* § 1568.0831 (enacted by Chapter 1333). The residents and operators are considered a family. *Id.*

8. *Id.* § 1568.02(c)-(d) (enacted by Chapter 1333). The facility must show evidence of the following: (1) The required written agreements; (2) the ability to provide linguistic services for non-English speaking residents; (3) provisions for culturally appropriate services; (4) provisions to accommodate residents with physical disabilities; (5) a written nondiscrimination policy; (6) a written policy of drug and alcohol use; and (7) the ability to provide services to targeted populations. *Id.* Additionally, the facility must show evidence of: (1) The ability to comply with the rules and regulations set out by the Department; (2) sufficient financial resources; (3) the ability to provide services required under California Health and Safety Code section 1568.02; (4) the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10% or more in, any residential care facility or in any clinic or facility licensed pursuant to California Health and Safety Code sections 1200-1245, 1250-1339.66, and 1500-1567.8; and (5) any disciplinary action taken against a license held or previously held by the above listed entities. *Id.* § 1568.04 (enacted by Chapter 1333).

9. *Id.* § 1568.09(a) (enacted by Chapter 1333). Crimes triggering investigation include convictions of any crime other than a minor traffic accident. *Id.* Persons to be investigated include those adults who are responsible for the administration for the direct supervision of the staff; any person living in the facility who is not a resident; any person providing patient assistance in dressing, grooming, bathing, or personal hygiene; any staff person or other person having frequent or routine contact with the patients (not including the resident's family, spouse, significant other, or friend, if the resident chooses to have contact with that person); the persons whose main duties are performed within the health facility, where the applicant is a firm, partnership, association, or corporation; any officer of the governing body of the applicant; and persons with financial interest or substantial influence over the operation of the facility. *Id.* § 1568.09(b) (enacted by Chapter 1333). The Department may sanction the residential care facility worker in a number of specified ways. *Id.* § 1568.09(c)-(e) (enacted by Chapter 1333). *See id.* § 1568.09(c) (enacted by Chapter 1333) (provisions regarding fingerprinting).



all the statutory requirements.<sup>10</sup> The Department may issue a provisional license if the facility substantially meets the requirements and there are no life safety risks involved, otherwise the license must be denied.<sup>11</sup>

Under Chapter 1333, the Department must inspect the facility ninety days after the issuance of the license.<sup>12</sup> The license expires one year from the date of issuance.<sup>13</sup> However, a two-year renewal license may be issued if the facility is in good standing.<sup>14</sup> A license must be forfeited if the licensee: (1) Sells or transfers the facility or its real property, except when the change in possession occurs by sale of stock and the majority shareholder has not changed; (2) surrenders the license; (3) moves the facility from its current location; (4) is convicted of certain offenses; or (5) dies.<sup>15</sup>

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10. *Id.* § 1568.062(a) (enacted by Chapter 1333). The director of the Department can waive the license requirement for any house, institution, hotel, foster home, shared housing project, or other similar facility that provides only housing, meals, transportation, housekeeping, or recreational and social activities, or where the residents have independent access to support services and no resident needs any element of care and supervision or protective supervision. *Id.* § 1568.03(d) (enacted by Chapter 1333).

11. *Id.* § 1568.062(b) (enacted by Chapter 1333). The provisional license expires six months from the date of issuance, or earlier at the director's discretion. *Id.* If it will take more than six months to comply with the regulations, the director, at the time of application, may extend the term of the license for an additional six months. *Id.*

12. *Id.* § 1568.07 (enacted by Chapter 1333) (the Department must conduct at least annual evaluations of facility compliance with the Department's requirements and regulations). Any person may request the Department to inspect a facility by transmitting a notice of an alleged violation. *Id.* § 1568.071(a) (enacted by Chapter 1333). Unless the Department finds that the complaint is willfully intended to harass a licensee or is without a reasonable basis, the Department must conduct an on-site inspection of the facility within 10 days of receiving the complaint. *Id.* § 1568.071(c) (enacted by Chapter 1333). If a facility accepts a resident who needs a higher level of care than the facility is authorized to provide, the Department must assess an immediate civil penalty of \$100 per resident per day of the violation. *Id.* § 1568.0821(a) (enacted by Chapter 1333). The civil penalty is \$200 per resident if an unlicensed facility is operated and the operator does not seek to be licensed or the application of licensure has been denied and the facility continues operations. *Id.* § 1568.0821(b) (enacted by Chapter 1333). In addition to suspension or revocation of a license for a regulation violation, the department may levy civil penalties against the facility. *Id.* § 1568.0822 (enacted by Chapter 1333). *Id.* § 1568.03(c) (enacted by Chapter 1333) (facilities to which Chapter 1333 does not apply).

13. *Id.* § 1568.061(a) (enacted by Chapter 1333).

14. *Id.* § 1568.061(b) (enacted by Chapter 1333). The license may be issued so long as the licensee has not violated any of the requirements during the preceding license term. *Id.*

15. *Id.* § 1568.061(d) (enacted by Chapter 1333). A deceased licensee's adult relative may continue to operate the facility if that person: (1) Notifies the Department of the death and the relative's intent to continue the operation on the next working day; (2) files an application within five days of the death which evidences the ability to continue the operation to the satisfaction of the

Under Chapter 1333, placement agencies may place only sufferers of chronic, life-threatening diseases in licensed facilities.<sup>16</sup>

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## Health and Welfare; underground storage tanks--release of hazardous substances

Health and Safety Code §§ 25297.1, 25299.79 (new); § 25299.60 (amended).  
AB 3560 (Sher); 1990 STAT. Ch. 1574

Existing law provides for the cleanup of hazardous substances<sup>1</sup> and the maintenance of a quality water supply.<sup>2</sup> Chapter 1574 requires the State Water Resource Control Board (Board), in cooperation with the Department of Health Services, to implement a local oversight program using selected local agencies<sup>3</sup> to abate the unauthorized release<sup>4</sup> of hazardous substances from

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Department; and (3) submits fingerprints and evidence of the licensee's death. *Id.* § 1568.064(a) (enacted by Chapter 1333). A person operating a facility while complying with California Health and Safety Code section 1568.064(a) is deemed not operating a facility without a license during the Department evaluation of the application. *Id.* § 1568.064(c) (enacted by Chapter 1333). *See id.* § 1568.082 (enacted by Chapter 1333) (grounds for suspension or revocation of a license).

16. *Id.* § 1568.081 (enacted by Chapter 1333). Sufferers of a chronic illness may be placed in an exempt facility under California Health and Safety Code section 1568.03(c). *Id.* The agency must report any suspected violations of Chapter 1333. *Id.* Any employee who recommends a individual to a non-licensed facility has committed a misdemeanor. *Id.*

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1. *See* CAL. HEALTH & SAFETY CODE § 25281(f) (West Supp. 1990) (definition of hazardous substance).

2. *See id.* §§ 25300-25335 (Hazardous Substance Act); CAL. WATER CODE §§ 13000-14075 (West 1971, West Supp. 1990) (Water Quality Control statutes). *See generally* Hingerty, *Property Owner Liability for Environmental Contamination in California*, 22 U.S.F. L. REV. 31 (1987) (discussion of both federal and California statutes relating to property owner liability for clean up of hazardous substances).

3. *See* CAL. HEALTH & SAFETY CODE § 25281(g) (West Supp. 1990) (definition of local agency).

4. *See id.* § 25281(w) (definition of unauthorized release).

underground storage tanks.<sup>5</sup> Under Chapter 1574, the Board must develop procedures concerning guidelines for site assignments, contents of agreements with local agencies, procedures for responsible parties<sup>6</sup> to petition the Board,<sup>7</sup> and methods for cost recovery from responsible parties.<sup>8</sup> Chapter 1574 requires the local agency to notify and recover the site-specific oversight costs<sup>9</sup> from the responsible party.<sup>10</sup>

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5. *Id.* § 25297.1(a) (enacted by Chapter 1574). *See id.* § 25281(x) (West Supp. 1990) (definition of underground storage tank). The selection must be made from agencies that apply to the Board, with a priority given to those agencies with demonstrated experience in cleanup and abatement of hazardous substances released from underground storage tanks. *Id.* § 29297.1(a) (enacted by Chapter 1574). The Board must not use a local agency for soil or groundwater cleanup unless the Board determines that the local agency has the capability to oversee or perform the cleanup. *Id.* § 29297.1(b) (enacted by Chapter 1574).

6. *See id.* § 25323.5 (West Supp. 1990) (definition of responsible party).

7. *Id.* § 25297.1(d)(3) (enacted by Chapter 1574) (procedures for review are to be conducted pursuant to California Water Code sections 13320-13321).

8. *Id.* § 25927.1(d)(1)-(4) (enacted by Chapter 1574).

9. *See id.* § 25927.1(e)(1) (site-specific oversight costs include responsible party identification and notification, site visits, sampling activities, meetings with responsible parties, meetings with the regional Board and other agencies, review of reports and preliminary assessments, development of enforcement actions against a responsible party, and issuance of closure document).

10. *Id.* § 25927.1(g)(2) (enacted by Chapter 1574). The responsible party is not liable for more than 150% of the total amount. *Id.* § 25927.1(i)(2) (enacted by Chapter 1574). The costs incurred in making an underground storage tank cleanup deposit are not recoverable under Chapter 1574. *Id.* § 25299.79 (enacted by Chapter 1574).

## Health and Welfare; waste management

Government Code §§ 66780.5, 66796.32 (repealed); Public Resources Code §§ 41280, 41480 (repealed); §§ 41500, 41510, 41802 (new); §§ 41003, 41303, 41750, 41793, 41823, 41825, 41903 (amended).

AB 2707 (La Follette); 1990 STAT. Ch. 1406

Existing law requires specified components to be included in the source reduction<sup>1</sup> and recycling<sup>2</sup> element of all city and county integrated waste management plans<sup>3</sup> that are submitted to the California Waste Management Board (Board).<sup>4</sup> Chapter 1406 requires each city and county<sup>5</sup> to prepare and submit a separate household hazardous waste element that sets forth a program for the collection, recycling, treatment, and disposal of hazardous wastes<sup>6</sup> produced by households within the jurisdiction of the entity.<sup>7</sup> Chapter 1406 also requires the Board to approve or

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1. See CAL. PUB. RES. CODE § 40196 (West Supp. 1990) (definition of source reduction).

2. See *id.* § 40180 (definition of recycling).

3. See *id.* § 40900 (legislative findings regarding integrated waste management plans).

4. *Id.* §§ 41003, 41303 (amended by Chapter 1406). The components required are the same for both city and county integrated waste management plans, and include, but are not limited to, waste characterization, source reduction, recycling, composting, solid waste facility capacity, education and public information, funding, and special waste. *Id.* See *id.* § 41000 (West Supp. 1990) (preparation of elements). See also *id.* §§ 40500-40510 (powers and duties of the Board). *Cf.* CONN. GEN. STAT. ANN. § 22a-211 (West Supp. 1990), FLA. STAT. ANN. § 403.706 (West Supp. 1990), N.J. STAT. ANN. § 13:1E-23 (West Supp. 1990) (similar solid waste management plan requirements for local governments).

5. See CAL. PUB. RES. CODE § 41510 (enacted by Chapter 1406) (requiring counties to determine programs regarding household hazardous waste generated by households in the unincorporated areas of the county).

6. See CAL. HEALTH & SAFETY CODE § 25117 (West Supp. 1990) (definition of hazardous waste).

7. CAL. PUB. RES. CODE §§ 41500, 41510 (enacted by Chapter 1406).

disapprove of the submitted household hazardous waste element within 120 days.<sup>8</sup>

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## Health and Welfare; waste--medical

Business and Professions Code § 4148 (amended); Health and Safety Code §§ 25117.6, 25157.3 (repealed); §§ 25015, 25016, 25017, 25018, 25019, 25020, 25020.2, 25020.5, 25020.8, 25021, 25021.2, 25021.5, 25021.8, 25022, 25022.2, 25022.5, 25022.8, 25023, 25023.2, 25023.5, 25023.8, 25024, 25024.2, 25024.5, 25024.8, 25025, 25025.2, 25025.5, 25025.8, 25026, 25026.2, 25026.5, 25026.8, 25027, 25027.2, 25027.5, 25027.8, 25030, 25030.1, 25030.2, 25030.4, 25030.6, 25030.8, 25031, 25032, 25033, 25034, 25034.3, 25034.5, 25034.8, 25035, 25036, 25037, 25037.5, 25038, 25038.2, 25038.5, 25038.8, 25039, 25039.2, 25040, 25040.5, 25041, 25041.5, 25042, 25043, 25044, 25045, 25045.1, 25046, 25047, 25048, 25049, 25050, 25051, 25052, 25053, 25054, 25055, 25056, 25057, 25058, 25059, 25060, 25061, 25062, 25063, 25064, 25070, 25070.1, 25070.2, 25070.3, 25071, 25072, 25072.5, 25073, 25074, 25075, 25076, 25077, 25078, 25079, 25079.1, 25079.2, 25079.3, 25080, 25081, 25082, 25083, 25084, 25084.5, 25085, 25086, 25087, 25088, 25090, 25090.5, 25091, 25091.5, 25092, 25093, 25094, 25095, 25096, 25096.1, 25097, 25098, 25099.1, 25099.2, 25099.3 (new); § 25117.5 (repealed and new); §§ 113, 471,

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8. *Id.* § 41802(a) (enacted by Chapter 1406). In addition, Chapter 1406 provides that the Board may not disapprove of a household hazardous waste element if the entity submitting the report complies with specified requirements. *Id.* § 41802(b) (enacted by Chapter 1406). The consideration of approval by the Board must include whether the local agency will use feasible methods to attain the requirements of the plan, devote reasonable expenditures to these goals, make reasonable efforts to inform the public, and whether a program for hazardous waste disposal is made available to all households in the jurisdiction. *Id.* § 41802(b)(1)-(4) (enacted by Chapter 1406). The Board may also consider the geographic size and population of the entity to determine whether the conditions for approval have been satisfied. *Id.* § 41802(c) (enacted by Chapter 1406).

25173.5 (amended); Public Resources Code §§ 40191, 43211, 43308 (amended).

AB 1641 (Mojonnier); 1990 STAT. Ch. 1614

AB 109 (Hayden); 1990 STAT. Ch. 1613

Prior law dictated that infectious waste<sup>1</sup> be regulated as hazardous waste.<sup>2</sup> Chapter 1641 enacts the Medical Waste Management Act, which redefines infectious waste as medical waste<sup>3</sup> and regulates the disposal of medical waste.<sup>4</sup> Under Chapter 1641, a local agency<sup>5</sup> may promulgate a program for managing medical waste.<sup>6</sup>

Under Chapter 1613, large quantity medical waste generators<sup>7</sup> must register<sup>8</sup> with an enforcement agency.<sup>9</sup> Small quantity

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1. See 1988 Cal. Stat. ch. 1028, sec. 1, at 2466 (amending CAL. HEALTH & SAFETY CODE § 25117.5) (repealed and enacted by Chapter 1614).

2. See *id.* §§ 25100-25249.1 (West Supp. 1990) (Hazardous Waste Control Law).

3. See CAL. HEALTH & SAFETY CODE §§ 25023.2 (enacted by Chapter 1613) (definition of medical waste); 25023.8 (enacted by Chapter 1613) (exclusions from the definition of medical waste).

4. *Id.* §§ 25015-25099.3 (enacted by Chapter 1614 and 1613). Cf. 42 U.S.C. § 6992 (1988) (Demonstration Medical Waste Tracking Program which mandates that a program for tracking medical wastes be established in specified states, unless the state chooses to opt out). California is not a state specified under this act. *Id.*; N.Y. ENVTL. CONSERV. LAW §§ 27-1501, 27-1517 (West Supp. 1990) (regulates the storage, treatment, disposal and transportation of regulated medical waste). See generally Holman, *Symposium on Waste Management Law and Policy: Introduction*, 18 ENVTL. L. 665, 665 (1988) (citing the introduction of medical waste regulation as a response to medical wastes and municipal sewage washing ashore in New York, New Jersey, and California during the summer of 1988).

5. See CAL. HEALTH & SAFETY CODE § 25023 (enacted by Chapter 1613) (definition of local agency).

6. *Id.* § 25031 (enacted by Chapter 1613). See *id.* § 25034.3 (enacted by Chapter 1613) (specifies the components of the medical waste management program). The local enforcement agency may collect fees necessary to establish and administer the program. *Id.* § 25034.5 (enacted by Chapter 1613).

7. See *id.* §§ 25024 (enacted by Chapter 1613) (medical waste generator is any person who produces medical waste, including health care providers, as defined by California Civil Code section 56.05; medical and dental offices, clinics, hospitals, surgery centers, laboratories, and other health facilities; veterinary offices, clinics, and hospitals; and pet shops); 25022.8 (enacted by Chapter 1613) (a large quantity generator produces 200 pounds or more of medical waste per month).

8. See *id.* §§ 25024.8 (enacted by Chapter 1613) (definition of medical waste registration); 25052 (enacted by Chapter 1614) (specifies the information required for the registration of large quantity generators). The registration is valid for two years. *Id.* § 25044(b) (enacted by Chapter 1613).

9. *Id.* § 25050(a) (enacted by Chapter 1614).

generators<sup>10</sup> that treat medical waste onsite<sup>11</sup> by incineration,<sup>12</sup> steam sterilization,<sup>13</sup> or microwave technology must also be registered.<sup>14</sup> Furthermore, medical waste must be hauled by a registered hazardous waste hauler,<sup>15</sup> unless the medical waste generator qualifies for a limited-quantity hauling exemption.<sup>16</sup> Chapter 1613 requires that haulers maintain tracking documents<sup>17</sup> of all medical waste transported for three years.<sup>18</sup>

Chapter 1641 dictates that all medical waste treatment facilities<sup>19</sup> obtain a permit<sup>20</sup> and be subject to inspection.<sup>21</sup> The

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10. *See id.* § 25026.8 (enacted by Chapter 1613) (a small quantity generator produces less than 200 pounds per month of medical waste).

11. *See id.* § 25025.8(a) (enacted by Chapter 1613) (definition of onsite).

12. *See id.* § 25090(a) (enacted by Chapter 1614) (specifies required method of incineration).

13. *See id.* § 25090(c) (enacted by Chapter 1614) (specifies the required method of steam sterilization).

14. *Id.* §§ 25030.1, 25040(a) (enacted by Chapter 1613). *See id.* §§ 25042 (enacted by Chapter 1613) (specifies the information the small quantity generator using designated onsite treatments must include when registering); 25044(b) (enacted by Chapter 1613) (the registration is valid for two years). Both small generators using onsite treatment and all large generators can register as one generator where two or more generators are operating in the same building. *Id.* §§ 25040(b) (enacted by Chapter 1613), 25050(b) (enacted by Chapter 1614). Additionally, where two or more generators are operating in different buildings, but are adjacent to one another, both generators may register as one generator. *Id.* §§ 25040(c) (enacted by Chapter 1613), 25050(c) (enacted by Chapter 1614). *See id.* § 25025.8(b) (enacted by Chapter 1613) (definition of adjacent). The medical waste generator that is required to register must maintain treatment operating records and a specified emergency plan to report or submit to the enforcement agency upon request. *Id.* § 25045 (enacted by Chapter 1613). *See id.* § 25045.1 (enacted by Chapter 1613) (small quantity generators that are not required to register, but must maintain an information document). *See id.* (specifies the requirements for the information document).

15. *See id.* § 25021.8 (enacted by Chapter 1613) (definition of hazardous waste hauler).

16. *Id.* § 25060 (enacted by Chapter 1614). The medical waste generator can apply for a limited-quantity hauling exemption if they: (1) Generate and transport less than 20 pounds of medical waste per week and file an information document as required by California Health & Safety Code section 25045.1; (2) transport the waste to a permitted treatment facility; and (3) maintain a tracking document. *Id.* § 25061 (enacted by Chapter 1614).

17. *See id.* § 25027.2 (enacted by Chapter 1613) (definition of tracking document).

18. *Id.* § 25063 (a) (enacted by Chapter 1614). *See id.* §§ 25063(b) (enacted by Chapter 1614) (specifies the required information for the tracking document); 25063(c)-(e) (enacted by Chapter 1614) (includes other requirements for the tracking document). *See also id.* § 25062 (enacted by Chapter 1614) (specifies additional requirements medical waste haulers must follow).

19. *See id.* § 25025(a) (enacted by Chapter 1613) (definition of medical waste treatment facility).

20. *See id.* §§ 25024.5 (enacted by Chapter 1613) (definition of medical waste permit); 25072 (enacted by Chapter 1614) (specifies the information required in order to obtain a permit); 25072.5 (enacted by Chapter 1614) (the Department of Health Services must review the applicant's past history of compliance before issuing or renewing a permit for an offsite treatment facility).

medical waste must be contained and stored according to the contents.<sup>22</sup> Additionally, Chapter 1641 mandates that any person<sup>23</sup> generating or treating medical waste ensure that it is treated by a specified method.<sup>24</sup> Finally, Chapter 1641 allows civil and criminal penalties for any violation,<sup>25</sup> as well as suspending or revoking any medical waste permits.<sup>26</sup>

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21. *Id.* § 25070 (enacted by Chapter 1614).

22. *Id.* §§ 25080-25084 (enacted by Chapter 1614). Medical waste is composed of biohazardous waste and sharps waste. *Id.* § 25023.2 (enacted by Chapter 1613). *See id.* §§ 25020.5 (enacted by Chapter 1613) (definition of biohazardous waste); 25026.5 (enacted by Chapter 1613) (definition of sharps waste). *See id.* §§ 25081 (enacted by Chapter 1614) (specifies the method of storage of biohazardous waste); 25081(b), 25082 (enacted by Chapter 1614) (specifies the method of storage of sharps waste).

23. *See id.* § 25026 (enacted by Chapter 1613) (definition of person).

24. *Id.* § 25090 (enacted by Chapter 1614) (treatments which are allowed include incineration, possible discharge to a public sewage system, steam sterilization, or other approved alternative medical waste treatment methods).

25. *Id.* § 25096 (enacted by Chapter 1614). *See id.* §§ 25097(b)(1) (enacted by Chapter 1613) (penalty for a small quantity generator who stores, treats, disposes, or causes the treatment or disposal in an unauthorized manner is an infraction with a \$1000 fine for the first offense); 25097(b)(2) (enacted by Chapter 1613) (penalty for a person other than a small quantity generator required to be registered is a misdemeanor with not less than a \$2,000 fine, imprisonment for up to one year in county jail, or both, for the first offense); 25097(c) (enacted by Chapter 1613) (penalty for a subsequent violation, within three years of a prior violation, is not more than one year in county jail, or one, two, or three years in state prison, or a fine of at least \$5,000 to \$25,000, or both); 25097(d) (enacted by Chapter 1613) (any person who knowingly treats or disposes in violation of the provisions is punishable by not more than one year in county jail, or one, two, or three years in the state prison, or a fine of \$5,000 to \$25,000, or both); 25098(a) (enacted by Chapter 1613) (any person intentionally making a false statement on a permit, registration, tracking document, or other record required by Chapter 1614 or Chapter 1613 is liable for a civil penalty of up to \$10,000 for each separate violation or, in the case of a continuing violation, \$10,000 for each day the violation continues); 25098(b) (enacted by Chapter 1613) (any person who fails to register or obtain a permit is liable for a civil penalty of up to \$10,000 for each violation and as above for continuing violations).

26. *Id.* § 25099.1 (enacted by Chapter 1614).